

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
EARTHLINK, INC.,
Complainant,
v.
SBC COMMUNICATIONS, INC,
PACIFIC BELL TELEPHONE COMPANY,
SOUTHWESTERN BELL TELEPHONE
COMPANY,
SBC ADVANCED SOLUTIONS, INC.
Defendants.
File No. EB-01-MD-014

ORDER

Adopted: December 23, 2002

Released: December 24, 2002

By the Deputy Chief, Market Disputes Resolution Division, Enforcement Bureau:

1. On August 20, 2001, EarthLink, Inc. ("EarthLink") filed a formal complaint against Defendants SBC Communications, Inc. ("SBC"), Pacific Bell Telephone Company ("Pacific Bell"), Southwestern Bell Telephone Company ("SWBT"), and SBC Advanced Solutions, Inc. ("ASI") (collectively, "Defendants"). The complaint alleges that Defendants' provisioning of wholesale ADSL transport service to EarthLink was unreasonable under section 201(b) of the Communications Act of 1934, as amended ("Act") and unreasonably discriminatory under section 202(a) of the Act. It also alleges that Defendants' provisioning of their Operations Support Systems for ADSL transport service was unreasonable under section 201(b) and unreasonably discriminatory under section 202(a). It further alleges that

1 EarthLink, Inc. v. SBC Communications, Inc., Pacific Bell Telephone Company, Inc., Southwestern Bell Telephone Company, SBC Advanced Solutions, Inc., File No. EB-01-MD-014 (filed Aug. 20, 2001) ("Complaint"). "ADSL" refers to asymmetric digital subscriber line service, a service that uses digital subscriber line ("DSL") technology.

2 Complaint at ¶¶ 66-84, 90-99.

3 Id. at ¶¶ 100-16.

Defendants' inadequate provisioning of ADSL transport service reduced and impaired the quality of ADSL service available to EarthLink and its subscribers in violation of section 214 of the Act, that Defendants' discriminatorily reduced the cost of acquiring ADSL transport service for their affiliate in violation of section 202(a) of the Act, and that Defendants' ADSL transport service provisioning violated the Commission's *Computer II* and *Computer III* requirements.⁴

2. On December 23, 2002, the parties filed a Joint Motion For Dismissal of Complaint With Prejudice, in which they state that they have reached a mutually-acceptable resolution of the issues alleged in the complaint, and move that we dismiss the complaint with prejudice.⁵

3. We grant the parties' joint motion to dismiss the complaint, with prejudice. We find that dismissal at this stage is appropriate, and will serve the public interest by promoting the private resolution of disputes and by eliminating the need for further litigation and the expenditure of additional time and resources of the parties and this Commission.

4. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.720-1.736, and authority delegated by sections 0.111, and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the joint motion to dismiss with prejudice the above-captioned complaint filed by EarthLink, Inc. IS GRANTED in its entirety.

5. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.720-1.736, and authority delegated by sections 0.111, and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that

⁴ *Id.* at ¶¶ 85-89, 117-21; 122-36 (citing *Third Computer Inquiry*, Report and Order, 104 F.C.C. 2d 958 (1986) (*Computer III*) (subsequent citations omitted); *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, Report and Order, 16 FCC Rcd 7418 (2001)).

⁵ Joint Motion For Dismissal of Complaint With Prejudice, File No. EB-01-MD-014 (filed Dec. 23, 2002).

the above-captioned complaint IS DISMISSED WITH PREJUDICE in its entirety and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Radhika V. Karmarkar
Deputy Chief
Market Disputes Resolution Division
Enforcement Bureau